

No. 9/5/84-6 Lab./2043.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s. S. J. Knitting and Finishing Mills (P) Ltd., 13/7, Mathura Road, Faridabad:—

IN THE COURT OF SHRI R.N. SINGAL, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 207 of 1983

between

SHRI MUDRIKA PARSHAD, WORKMAN AND THE RESPONDENT MANAGEMENT OF
M/S. S.J. KNITTING AND FINISHING MILLS (P) LTD., 13/7, MATHURA ROAD,
FARIDABAD

Present:—

Shri M.K. Bhandari for the workman.

Shri R.C. Sharma for the respondent.

AWARD

This reference has been referred to this court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/10-83/33340—45, dated 18th July, 1983, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the industrial dispute existing between Shri Mudrika Parshad, workman and the respondent,—management of M/s. S.J. Knitting, and Finishing Mills (P) Ltd., 13/7, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of service of Shri Mudrika Parshad was justified and in order ? If not, to what relief is he entitled ?

According to the claim statement, the claimant was appointed on 8th October, 1975. On 20th July, 1981 a notice was fixed that five jobbers were immediately dismissed. His name was included in that list. On 23rd July, 1983 he sent a registered letter to the respondent asking reasons for his termination, but he did not receive any reply. It is alleged that he was not surplus employee. He was an active member of the union. Hence he has been terminated *malafidely*. He gave his demand notice on 30th July, 1981.

This reference has been contested by the management. It is admitted that the claimant was appointed on 8th October, 1975 as jobber. It is also admitted that the notice was also displayed on 20th July, 1981 that all the five jobbers were retrenched with immediate effect. All the jobbers had become as surplus due to reorganization for effecting economy due to uncertain position of job order, the management decided to reorganise its printing department keeping financial economy in view. The position of the jobbers have been found surplus and that the position of the jobbers were abolished and the services of all the jobbers were retrenched. There were five jobbers who were retrenched. Their pay and notice pay was offered. But the workman refused to accept it.

The rejoinder was also filed. The reference was contested on the following issue :—

1. AS PER REFERENCE ?

I have perused the entire evidence on file and I have heard representative of both the parties. My finding on the issue is as under :—

Issues No. 1.—The retrenchment order is Ex. M-1. It is contended that two junior jobbers S/Shri Lal Ji and Om Bir are still working in the factory, but is admitted by the workman that they have been promoted as Supervisor on the same day. It is admitted that all the five jobbers were retrenched in these circumstances, the department of jobbers was closed and jobbers were became surplus and thence all the workmen could be retrenched. It is contended that no retrenchment compensation was paid to the workman. The contention of the management was that an amount of Rs. 3,205 was offered to him on the same date,—*vide* letter Ex. M-2 but the workman refused to accept this amount. The workman has admitted that he was directed by the Comrade not to accept any thing except the letter of retrenchment. It is, therefore, clear that the claimant refused to accept the retrenchment compensation offered to him,—*vide* Ex. M-2. It is further, contended that this retrenchment was not notified to the government. Hence it was illegal. The witness of the management, namely, MW-1 Shri R.N. Sharda has said that notice was also sent to the Government which is Ex. M-3, but no written proof has been given that the notice has been sent to the Government. The representative of the management has contended that even if one month wages were paid in respect of one month notice, no such notice to the Government is necessary. It is so

held in Babaji Charan Swain and others ; 9173-LIC page 742. Hence even if notice was sent to the Govt. it was not mandatory as notice pay was offered to him. In view of the above discussion, I find that the services of all the workman were terminated as department of jobbers was closed. The mandatory provisions of Section 25-F of the Industrial Disputes Act were complied with by offering necessary compensation. Hence the order of termination was justified and he is not entitled to any relief.

The reference is answered accordingly.

Dated the 27th February, 1985.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 618, Dated the 6th March, 1985

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under Section 15 of the I.D. Act.

R. N. SINGAL,

Presiding Officer,
Labour Court, Faridabad.

No. 9/5/84-6Lab/2160.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workmen and the management of M/s Haryana Agro Foods and Fruit Processing Plant, Murthal, Sonapat:—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 42 of 79

between

SHRI PREM SINGH, APPLICANT AND THE MANAGEMENT OF M/S. HARYANA AGRO FOODS AND FRUIT PROCESSING PLANT, MURTHAL, (SONEPAT)

Shri S.S. Gupta, A.R. for the applicant.

Shri M.M. Kaushal, A.R. for the respondent.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the applicant Shri Prem Singh and the management of M/s. Haryana Agro Foods and Fruit Processing Plant, Murthal (Sonapat), to this Court, for adjudication,—*vide* Labour Department Gazette Notification No. 1D/FD/SPT/126-78/8211, dated 22nd February, 1979 :—

Whether the termination of service of Shri Prem Singh was justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The workman alleged that he was employed with the respondent on regular basis as Security-cum-Time Office Incharge since June, 22, 1977 and that the respondent choose to terminate his services unlawfully on 28th September, 1978, without holding any enquiry, prior notice, or payment of retrenchment compensation as envisaged in section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. A detailed reply was filed by the respondent, controverting the claim of the petitioner. The preliminary objections taken are that the applicant was employed in a supervisory capacity, who had two Time Keepers under him and beside that many Security Guards also under his control and that the applicant had the powers to recruit labourers on daily wages and also discharge them and his salary was more than Rs. 500 and as such

he does not fall within the ambit of the term "workman" as defined in section 2(s) of the said Act and so this reference is bad in law as the present dispute is beyond the jurisdictional competency of this Court. On merits, it is held that the applicant being responsible to supervise the work of time office clerks but he indulged in tempering with the attendance record by marking false attendance and drawing wages and so the applicant was not found fit to be retained in employment and his services were terminated. It is also alleged that on one occasion, there was a shortage of items in the guest house, of which, the applicant was the Incharge.

4. In rejoinder filed by the applicant he alleged that he was never employed in a supervisory capacity, nor did he function as such and he was performing the duties of clerical nature. Other allegations made in the reply have been controverted.

5. On the pleadings of the parties, the following issues were settled for decision on 5th February, 1980 :—

1. Whether the applicant is a workman under section 2(s) of the I.D. Act, 1947 ?

2. Whether the termination of service of Shri Prem Singh was justified and in order ? If not, to what relief is he entitled ?

6. Though, there was no specific order by the Court that issue No. 1 shall be tried as preliminary issue but at the fagend of the trial, the learned Authorised Representatives of the parties made statements in the Court that they have adduced evidence on issue No. 1 alone, which should be tried as a preliminary issue. Under these circumstances, I am seized of decision of issue No. 1 only. The workman appeared as WW 1 and the management examined MW-1 Shri Jeewan Bhardwaj, Senior Marketing Manager and MW-2 Shri S.K. Chakravarti. The learned Authorised Representatives of the parties heard. My findings on the preliminary issue are as under :—

Issue No. 1

7. To prove this issue, applicant appeared as his own witness and stated that he was employed in the month of June, 1977 as a Security-cum-Time Office Incharge and that his duties were to mark the attendance of the employees, prepare pay bills and to conduct searches of the employees entering the mill premises, keep a watch over the vehicles entering or leaving the factory premises, deposit token tax of the vehicles and that he has no power to take disciplinary action against any employee.

8. On the other hand, the management examined MW-1 Shri Jeewan Bhardwaj, Senior Marketing Manager, who stated that he remained posted as General Manager of the respondent concern at Murthal and knew the applicant, under whom, two time office clerks and 6-7 Security Guards were functioning and that the number of Security Guards varied from time to time and that Exhibit M-1 to M-6 are the daily wages workers engagement statements and that daily wagers used to be recruited by the applicant on the requirement furnished by the Production Manager and that their services could be terminated by the applicant and that the time office clerks used to prepare the attendance and payment record, which used to be checked by the applicant and further the applicant was Incharge of the guest house. Similarly MW-2 Shri S.K. Chakravarti, Assistant Accountant of the respondent stated that he remained as Cashier-cum- Accounts Clerk in the respondent concern from the year 1975 to 1980 and as such he knew the applicant and that the letters Exhibit MW-2/1 to MW-2/4 were issued by the applicant under his signatures and similarly letters Exhibit MW-2/5 to MW-2/17 were also issued under the signatures of the applicant.

9. The learned Authorised Representative of the workman Shri S.S Gupta tried to assign a modest nomenclature of a clerk to the applicant in his obvious anxiety to bring the present dispute in the ambit of Industrial Law. His line of reason was that, though the designation of the applicant was high sounding but actually the applicant was performing duties of clerical nature, which did not involve any initiative, creativity, control or diguity. Elaborating his contention further Shri S.S. Gupta contended that limited amount of supervision and control over the employees, would not take any employee out of the category of a "workman", if he is mainly employed for clerical work.

10. On the other hand, the learned Authorised Representative of the respondent Shri M.M. Kaushal contended that beside the glamorous nomenclature of the applicant, the applicant was performing the duties of a supervisory, directional and controlling nature. In that behalf he made a reference to daily wagers engagement statements Exhibit M-5 to Exhibit M-15, which have been prepared by a clerk and checked by the applicant. He further made a pointed reference to Exhibit MW-2/1 a letter signed by the applicant on behalf of the General Manager address to the Distt. Excise and Taxation Officer, Sonapat regarding payment of taxes of a vehicle. Exhibit MW-2/2 is also a letter signed by the applicant on behalf of the General Manager addressed to the Secretary, Regional Transport Authority, Ambala Cantt, regarding some dispute over the registration of a vehicle. Exhibit MW 2/3 is in the form of a flat issued by the applicant to the Drivers of the vehicles owned by the respondent. Similarly Exhibit MW-2/3A and MW-2/4 are the orders issued by the applicant to regulate the working conditions of the vehicles owned by the respondent. Exhibit MW-2/5 is also an order issued by the applicant to the Drivers to regulate the entry and exist of the vehicles from the factory premises. Exhibit MW-2/6 to MW-2/17 are the applications for leave put up before the applicant for sanction. Exhibit M-C is also a letter for request by the applicant to the authorities of the respondent for issuance of a cheque for Rs. 3324 for purchase of tyres and tubes.

11. The factual position has been detailed above. The law on the point has been lucidly enunciated by their Lordships of the High Court of Delhi 1977 (34) Indian Factories and Labour Reports. After hearing Counsel of the parties his Lordship observed as under :—

After hearing learned counsel for the parties, it appears to me that this contention of the petitioner is difficult to dispel. It is well settled that an employee, who was neither employed in a managerial capacity nor is required substantially to discharge administrative or supervisory duties, would not necessarily be a workman in terms of section 2(s) of the Act, he must fall in one of the four categories enumerated in the main section. It is only when he answers the description of one or more than of the 4 categories enumerated in the section that the operation of the exclusory provision of the Act may nevertheless deprive him of status as a workman. There can be no doubt that a large number of employees in an industry may be engaged to carry out different duties without falling in any of the 4 categories but at the same time falling short of the categories of managerial, administrative or supervisory staff. Whereas in the present case a highly qualified person with wide experience of audit, accounts, law, business management, etc., seasoned in the art of running social cultural and service organisations, competent to undertake responsible jobs of carrying out purchases, drafting pleadings, charge-sheets, etc., holding departmental enquiries, instructing counsel, appearing in Courts, and interviewing high powered Government officers in course of liaison duties, may or may not be treated as forming part of the managerial, administrative or supervisory pool or an industrial establishment, but it would be difficult to condemn him, even on his own asking, that he was carrying on routine duties of a clerical nature which did not involve any initiative, imagination, creativity and a limited power of self-direction. If such a person, as again the present case, does some clerical duty in the office, which is purely incidental to his main work of a multifarious nature such ancillary duty would nevertheless, be incapable of taking him out of the category of the employees, who would stand apart, both from the four categories envisaged in the section, and the managerial administrative and supervisory cadre. The extreme position that the definition in Section 2(s) is all comprehensive and contemplates that all persons employed in an industry 'must' necessarily fall in one or the other of the four classes' cannot be sustained and was, with respect, rightly rejected by the Supreme Court in case of *Burmah Shell Oil Storage and Distributing Ltd., V. Burmah Shell Management Staff Association and others* (5). It is erroneous to presume, as was apparently done by the Additional Labour Court, that merely because the respondent did not perform substantially supervisory functions, he must belong to the clerical category. Such a presumption would run counter to the ratio of the judgement of the Supreme Court in the case of *May and Barker* (6). In returning the finding in favour of the respondent, the Labour Court committed an error of law patent on the face of the record in its failure to recognise the true legal position and in applying a wholly erroneous approach to the question, if the respondent was a workman and, therefore, within the Industrial Law. The erroneous approach would clearly vitiate the decision.

12. Though there is no evidence except the bald statement of the applicant that he was performing the duties of clerical nature but even if the applicant had been doing some clerical duty in the office, which was purely incidental to his main work of multifarious nature, such ancillary duty would, nevertheless, be incapable of taking him out of the category of the employees, who would stand apart, both from the 4 categories envisaged in the section, and the managerial, administrative and supervisory cadre. As already held the applicant was hardly performing any duties of clerical nature. He had been issuing orders to the Drivers to regulate the entry the vehicles in the factory premises. Further, he has been corresponding with various departments on behalf of the respondent concern, it cannot be presumed that this correspondence was ever typed by the applicant. So, the position of the applicant was that he did not fall in the 4 categories envisaged in section 2(s), though his functions were short of managerial, administrative and supervisory cadre and as such he cannot held to be a workman as defined in section 2(s) of the Act. So, this issue is decided against the workman.

13. In the light of my decision of the preliminary issue, holding that the applicant is not a workman, other issue need not be decided, because the same is beyond the jurisdictional competency of this Court and the reference is bad in law. The same is answered and returned accordingly. There is no order as to cost.

Dated 2nd March, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst No. 42/79/451, dated 16th March, 1985

Forwarded (four copies), to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.